

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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(240) 777-6600

CASE NO. A-6513
PETITION OF JUAN M. RODRIGUEZ

OPINION OF THE BOARD
(Public Hearing Date: April 5, 2017)
(Effective Date of Opinion: April 13, 2017)

Case No. A-6513 is an application for a variance by Juan M. Rodriguez to allow the placement of a shed 1.0 foot from the side lot line. In accordance with Section 59-4.4.9.B.2 of the Montgomery County Zoning Ordinance, the required setback from the side lot line is 5.0 feet.

The Board of Appeals held a hearing on the application on April 5, 2017.¹ Juan M. Rodriguez (the "Petitioner") appeared in support of his application. Mr. Rodriguez was represented at the hearing by Seth Shich, Esquire.

Decision of the Board: Requested Variance **GRANTED**.

EVIDENCE PRESENTED

1. The subject property is Lot 28, Block Q, New Hampshire Estates Subdivision located at 922 E. University Boulevard, Silver Spring, Maryland, 20903, in the R-60 Zone. The Petitioner purchased this property in June 2000. See Exhibit 10.
2. The subject property is nearly rectangular, but has an angled rear lot line. See Exhibit 4. At 5,090 square feet, it is substandard for the R-60 Zone. The Petitioner's Statement of Justification states that "[t]he Subject Property was constructed in 1950 and is abutted to the North by Lot 29; to the East by Lot 2; and to the South by Lot 27 (collectively, the "Abutting Properties") ... The Abutting Properties are much deeper and larger in size than the Subject Property." See Exhibit 10. The original Statement submitted in support of this variance states that excepting the properties to the side of his

¹ The Board originally noticed this hearing for February 22, 2017, but received word the day before that hearing was to be held that the Petitioner had hired counsel who desired additional time to prepare.

property, all of the other properties on the surrounding subdivided block are larger and deeper than the Petitioner's. See Exhibits 3 and 7(b).

3. The Petitioner testified that when he purchased the property, it contained a house and a shed. He testified that the shed has since been replaced because it was falling down. He testified that he started construction on the shed in 2013, and has spent approximately \$30,000 on it. He stated that the shed is not 100% finished, stating that it still needs some inside work and details. He estimated that it would take another \$30,000 to complete the shed, and testified that it would cost him an additional \$20,000 if the shed has to be moved. He testified that the shed electricity and water, but no toilet.

4. The Petitioner's Statement of Justification states that "[t]he New Shed uses the existing concrete foundation of the Old Shed and is substantially the same as the Old Shed – just newer and more aesthetically appealing." See Exhibit 10. At the hearing, the Petitioner testified that the "Old Shed" was sited on the side lot line, whereas the "New Shed" has been moved one foot away from that lot line. When asked by the Board how the New Shed could use the Old Shed's foundation, but be set one foot farther from the side lot line than its predecessor, counsel for the Petitioner explained that one foot had been cut off of the concrete foundation. The Petitioner testified that in addition to using the foundation of the Old Shed, the New Shed uses some plywood and joists from the Old Shed.

5. The Petitioner's Statement of Justification asserts that "[t]he location of the New Shed also substantially conforms with the established traditional development pattern of the neighborhood. Section 59-7.3.2(B)2.a.v. Indeed, many of the homes in the neighborhood have sheds that do not comply with the Setback Requirements (Ex. 2)." See Exhibit 10. At the hearing, the Petitioner estimated that 90% of the neighboring properties have sheds, and he testified that they are all less than five (5) feet from the property line. When asked by the Board if any of the other sheds in the neighborhood were two stories, the Petitioner testified that the other sheds were one story.

6. The Petitioner's Statement of Justification further states that "[c]reating a greater setback between the shed and the boundary of Lot 27 is not possible due to the shallowness and size of the Subject Property," and thus asserts that "[t]he variance is the minimum necessary to overcome the practical difficulties that full compliance with the Setback Requirement would impose due to the unusual conditions of the property." See Exhibit 10. The Petitioner's original Statement confirms this, indicating that "the narrowness and shallowness of the lot does not facilitate the placement of a storage shed in any other location than where it is currently located without blocking rear egresses or impede [sic] free moments in the backyard." See Exhibit 3.

7. The Petitioner's Statement of Justification states that granting the variance "would not be adverse to the use and enjoyment of the abutting properties. The variance would enable Mr. Rodriguez to rebuild an existing structure, which would have the beneficial effect of improving the value of the Subject Property and of surrounding properties," and "would not impair the intent and integrity of the general plan of the neighborhood but

would be consistent with that plan in that many of the properties in the neighborhood have non-conforming sheds." See Exhibit 10. The Petitioner's original Statement makes similar statements, namely that granting the variance will not be averse to the use and enjoyment of abutting neighbors or confronting properties, that "historically that location on all properties in the neighborhood is used for placement of accessory structures and as such the shed is the same in disposition and appearance as others and does not stand out in the neighborhood," and that the variance can be granted "without substantial impairment to the intent and integrity of the general or applicable master plan." See Exhibit 3.

FINDINGS OF THE BOARD

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variances can be granted. The requested variances comply with the applicable standards and requirements set forth in Section 59-7.3.2.E as follows:

1. *Section 59-7.3.2.E.2.a - one or more of the following unusual or extraordinary situations or conditions exist:*

Section 59-7.3.2.E.2.a.i - exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;

The Board finds that at 5,090 square feet, the subject property is substandard for the R-60 Zone, which has a 6,000 square foot minimum. Based on the Petitioner's Statements of Justification, testimony, and exhibits of record, the Board further finds that the subject property is smaller and shallower than most if not all of the properties on the surrounding block. See Exhibits 3, 4, 7(b), and 10. Taken together, the Board finds that these factors constitute an unusual or extraordinary condition peculiar to the subject property.

Section 59-7.3.2.E.2.a.v - the proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood;

Based upon the Petitioner's Statements of Justification and testimony, and on Exhibits 7(a) and (b), the Board finds that the placement of the proposed shed substantially conforms with the established pattern for placement of sheds in this neighborhood.

2. *Section 59-7.3.2.E.2.b. the special circumstances or conditions are not the result of actions by the applicant;*

The Board finds that the size and shape of the subject property, and the established pattern for placement of sheds in the neighborhood, are not the result of any action by the Petitioner.

3. *Section 59-7.3.2.E.2.c. the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;*

The Board finds, per the Petitioner's Statements of Justification, that the variance is the minimum necessary to allow the placement of the new shed in substantially the same location previously occupied by the old shed because the small size and shallowness of the lot do not allow for alternative. See Exhibits 3 and 10.

4. *Section 59-7.3.2.E.2.d. the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan; and*

The Board finds that the variance continues the residential use of the property, and can be granted without substantial impairment to the intent and integrity of the East Silver Spring Master Plan, which recommends preserving existing residential character, encouraging neighborhood reinvestment, and enhancing the quality of life throughout East Silver Spring.

5. *Section 59-7.3.2.E.2.e. granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.*


The Board finds per the Statements of Justification and testimony submitted by the Petitioner that the new shed replaces a dilapidated shed and continues a neighborhood pattern of placing accessory structures in the setbacks, and thus will not be not adverse to the use and enjoyment of abutting or confronting properties. See Exhibits 3 and 10.

Accordingly, the requested variance of four (4) feet to allow the placement of a shed one (1) foot from the side lot line setback of the subject property is **granted**, subject to the following conditions:

1. Petitioner shall be bound by his testimony and exhibits of record, to the extent that such testimony and evidence are relied on in this opinion; and
2. Construction shall be according to Exhibits 4 and 5 (inclusive).

Therefore, based upon the foregoing, on a motion by John H. Pentecost, seconded by Edwin S. Rosado, with Carolyn J. Shawaker, Chair, Stanley B. Boyd, and Bruce Goldensohn in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.


Carolyn J. Shawaker
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 13th day of April, 2017.



Barbara Jay
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.